

STATE OF MICHIGAN
COURT OF APPEALS

STEPHANIE KURC,

Plaintiff-Appellant,

v

MCLAREN REGIONAL MEDICAL CENTER,

Defendant-Appellee.

UNPUBLISHED
November 8, 2002

No. 233936
Genesee Circuit Court
LC No. 99-066417-NO

Before: Griffin, P.J., and Gage and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff broke her leg and was admitted to defendant's facility. On October 24, 1996 she underwent routine tests. As plaintiff was being moved from a gurney to her bed her leg was twisted and re-broken. On October 8, 1999 plaintiff filed suit alleging that defendant's employees were negligent in failing to take proper precautions to avoid re-injuring her leg. Defendant moved for summary disposition pursuant to MCR 2.116(C)(7) and (10), arguing that plaintiff's claim was actually one for medical malpractice, and as such was barred by the applicable two-year statute of limitations. MCL 600.5805(5). In response, plaintiff argued that the claim sounded in ordinary negligence rather than medical malpractice, and thus was subject to the three-year statute of limitations. MCL 600.5805(9).

Initially, the trial court denied defendant's motion for summary disposition. However, upon reconsideration the trial court granted the motion, finding that because plaintiff's suit raised the issue of what reasonable medical care should have been rendered, it sounded in medical malpractice.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

The statute of limitations for a medical malpractice action is two years. MCL 600.5805(5). A medical malpractice claim accrues at the time of the act or omission that serves as the basis for the claim. MCL 600.5838a(1). Whether a medical malpractice limitations period applies depends on the nature of the allegations. The key to whether a claim sounds in

malpractice is whether it is alleged that the negligence occurred within the course of a professional relationship in which medical care and treatment was rendered. *Dorris v Detroit Osteopathic Hosp Corp*, 460 Mich 26, 46-47; 594 NW2d 455 (1999); *Regalski v Cardiology Associates, PC*, 459 Mich 891; 587 NW2d 502 (1998).

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition. We disagree and affirm. Plaintiff's complaint alleged that defendant's employees were negligent in transferring her from the gurney to her bed, and that her leg was re-broken as a result. In *Regalski, supra*, the complaint alleged that the plaintiff was injured because the defendant's technician was negligent in assisting her out of a wheelchair and onto an examination table where a test was to be performed. Our Supreme Court concluded that the claim sounded in malpractice because the act that formed the basis of the suit constituted the rendering of medical care and treatment.

Here, the act that formed the basis of plaintiff's complaint occurred in the context of plaintiff's professional relationship with defendant. *Dorris, supra*. Plaintiff had undergone surgery to repair her broken leg. The act of transferring plaintiff from a gurney to a bed required training and the exercise of medical judgment both to minimize discomfort and to guard against re-injuring the leg. Plaintiff's assertion that *Regalski, supra*, is distinguishable because the negligence occurred prior to the procedure being performed is without merit. The *Regalski* Court did not indicate that such a temporal distinction was the basis of its decision. The trial court correctly determined that *Regalski, supra*, controlled and that plaintiff's complaint sounded in medical malpractice rather than in ordinary negligence. The complaint was not filed within the two-year limitations period applicable to medical malpractice actions. MCL 600.5805(5). Summary disposition was proper.

Affirmed.

/s/ Richard Allen Griffin
/s/ Hilda R. Gage
/s/ Patrick M. Meter